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Sacrificed Sovereignty?: Dutch Soft Drug Policy in the Spectre of Europe Without Borders

INTRODUCTION

For the past two decades, the Netherlands has had a reputation as being a Western European “mecca” for drug users and drug traffickers.¹ This reputation may be somewhat undeserved; Dutch laws governing drug trafficking and the consumption of “hard drugs” are at least as stringent as those of other European Union (EU)² nations.³ Nonetheless, the Netherlands’ reputation for liberalism toward drug use is a direct result of its relatively permissive policy toward the consumption of “soft drugs.”⁴

Although studies indicate that the Dutch policy toward soft drug consumption is successful in terms of demand reduction and public health aspects,⁵ the Netherlands is under increasing pressure to harmonize its laws with those of its neighbors given the impending elimination of internal border controls throughout the EU created by both the Maastricht Treaty⁶ and the Schengen Agreement⁷. If the resultant Single Market creates the anticipated free movement of goods and

¹ A.M. van Kalmthout, *Characteristics of Dutch Drug Policy in the Netherlands*, in *DRUG POLICIES IN WESTERN EUROPE* 259, 260. (Hans-Jorg Albrecht & Anton van Kalmthout eds., 1989).

² The European Community (EC) became the European Union (EU) when the Treaty on European Union, also known as the Maastricht Treaty, came into force in November, 1993. See Treaty on European Union, Feb. 7, 1992, 31 I.L.M. 247 [hereinafter *MAASTRICHT TREATY*]. For purposes of consistency, this Note will refer to all pre-November 1993 EC activity as EU activity.

³ See van Kalmthout, *supra* note 1, at 262–63, 266. “Hard drugs” are defined as those, such as heroin and cocaine, that carry “unacceptable risks”; “soft drugs” are defined as traditional hemp products like marijuana and hashish. *Id.* at 263.

⁴ See *id.*

⁵ *Id.* at 265 n.11.

⁶ *MAASTRICHT TREATY*, *supra* note 2; See O. Anjewierden and J.M.A. van Atteveld, *Current Trends in Dutch Opium Legislation*, in *DRUG POLICIES IN WESTERN EUROPE*, *supra* note 1, at 235, 238.

⁷ Schengen Agreement on the Gradual Abolition of Checks at their Common Borders, June 14, 1985, Belg.–Dr.–F.R.G.–Lux.–Neth., 30 I.L.M. 68 (1991) [hereinafter *Schengen Agreement*]. Under the Schengen Agreement, Belgium, Germany, France, Luxembourg, and the Netherlands agreed to the gradual abolition of controls at their common frontiers. *Id.* art. 18.

people across borders, activities such as international drug trafficking could also increase.⁸ Thus, the Netherlands faces heavy pressure to make its policies toward soft drugs conform to those of the rest of the EU.⁹

Part I of this Note examines the international agreements which create pressure on the Netherlands to harmonize its soft drug policies with other EU nations. Part II discusses the Dutch drug laws at issue. Part III discusses different options the Netherlands might take in the interest of harmonization, and which course would be the best for the Netherlands. This Note concludes that, while the Netherlands' ideal solution would be to encourage other EU nations to adopt the successful Dutch policy toward soft drugs, the Netherlands will probably take the simpler route of compromising its own policy to achieve harmonization with the policies of its neighbors.

I. INTERNATIONAL AGREEMENTS ON THE ELIMINATION OF INTERNAL BORDER CONTROLS

A. *The Maastricht Treaty*

The Maastricht Treaty, known formally as the "Treaty on European Union," went into force on November 1, 1993.¹⁰ The treaty purported to create a single European market, featuring the free movement of people, goods, and workers across internal borders within the EU.¹¹ Article 8A(1) of the Maastricht Treaty states: "Every citizen of the Union shall have the right to move and reside freely within the territory of the member states, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect."¹²

⁸ See Hannah G. Sevenster, *Criminal Law and EC Law*, 29 COMMON MKT. L. REV. 29, 59 (1992).

⁹ See Henk van Vliet, *The Uneasy Decriminalization: A Perspective on Dutch Drug Policy*, 18 HOFSTRA L. REV. 717, 717-18, 743 (1990). Other Member States, particularly Germany, feel that the Netherlands will be a convenient supply station for individuals who wish to take advantage of open borders, bringing their wares into these other states. *Id.*, Roger Boyes, *Marijuana Smoke Drifts Through Open Market's Gaps*, THE TIMES (London), Aug. 17, 1993, available in LEXIS, Europe Library, Times File.

¹⁰ See MAASTRICHT TREATY, *supra* note 2, art. R.

¹¹ See *id.*, pt. 2, art. 8A(1). The European Union, which consists of the signees to the Maastricht Treaty, includes Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Portugal, and Great Britain. *Id.*, pmbl.

¹² *Id.*

Article K.1 of the Maastricht Treaty qualifies this particular objective in regard to drug trafficking.¹³ Article K.1 establishes judicial cooperation in criminal matters as a “matter of common interest” between the Member States for the “purposes of achieving the objectives of the Union, in particular the free movement of persons.”¹⁴

In addition, article 100 of the Treaty, dealing with the approximation of laws, states:

The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the member states as directly affect the establishment or functioning of the common market.¹⁵

Thus, according to the text of the Treaty, if the European Council¹⁶ can establish that the leniency of one nation’s laws adversely affects the “establishment or functioning of the common market,” it can issue a directive that expressly creates a conflicting EU law with the power to issue sanctions if the dissenting nation does not comply.¹⁷ Taking all of these provisions into consideration, if the Maastricht Treaty does not have the explicit ability to force the Netherlands to conform its soft drug policies to those of the other nations of the EU, it at least expresses the desire for harmonization of criminal laws, which would ostensibly include Dutch drug laws.¹⁸

¹³ *Id.* art. K.1(9).

¹⁴ *Id.* art K.1.

¹⁵ *Id.* art. 100.

¹⁶ See MAASTRICHT TREATY, *supra* note 2, tit. I, art. D. The European Council (EC), which is established in Title I, article D of the Maastricht Treaty, establishes the EC, which is comprised of the heads of state of each Member State, as well as the President of the European Commission. *Id.* The Council meets twice a year and issues reports to the European Parliament (the legislative body in the EU), setting priorities and political guidelines for the EU. *Id.*

¹⁷ See *id.* It is unclear whether the Council has the power to impose sanctions in the event of noncompliance with a directive if the directive does not relate to competition law. See Sevenster, *supra* note 8, at 33–35. Article 172 of the Maastricht Treaty reads: “Regulations made by the Council pursuant to the provisions of this Treaty may give the Court of Justice unlimited jurisdiction in regard to the penalties provided for in such regulations.” MAASTRICHT TREATY, *supra* note 2, art. 172. Sanctions are only mentioned, however, in the article relating to competition law; thus it is uncertain whether or not article 172 gives the European Court of Justice (also created by the Maastricht Treaty) a broad competence to impose sanctions, or simply the power to impose sanctions for violation of competition laws. Sevenster, *supra* note 8, at 33.

¹⁸ See MAASTRICHT TREATY, *supra* note 2, art. K.1.

B. *The Schengen Agreement*

On June 14, 1985, Belgium, West Germany, France, Luxembourg, and the Netherlands concluded the Schengen Agreement, which called for the gradual abolition of border controls at the common frontiers of these states.¹⁹ On June 19, 1990, the parties to the original agreement concluded a convention to implement the agreement.²⁰ The agreement contained detailed rules on the abolition of internal border checks of persons and was seen as a forerunner to the concept of "free movement of persons" expressed in the Maastricht Treaty.²¹ Under this agreement, "Johann Schmidt [could] fly from Frankfurt to Athens as easily as John Doe flies from Boston to San Diego," once its provisions are solidly in place.²²

The Dutch policies toward soft drugs are implicitly challenged under the Schengen Agreement.²³ Article 19 specifically states: "The Parties shall seek to harmonize laws and regulations, in particular on: drugs, arms and explosives, registration of travellers in hotels."²⁴ While the text of this article does not directly address Dutch policies toward soft drugs, such policies are inconsistent with those of other nations; thus the Netherlands would seemingly bear the burden to conform.²⁵

While the Schengen Agreement was officially enacted in 1990, parties to the agreement have not implemented all of its measures.²⁶ The delay is a result of both technical difficulties between the parties and complaints by certain parties that border controls would be too lax to stop illegal immigration and the increase of drug trafficking.²⁷ Full implementation of the Schengen Agreement's open borders provisions, which had been scheduled for March 26, 1995, is currently being

¹⁹ See Schengen Agreement, *supra* note 7, art. 18.

²⁰ *Id.* at Introductory Note.

²¹ Schengen Agreement, *supra* note 7, art. 18; Anjewierden, *supra* note 6, at 237-238.

²² *Open to Us, Closed to Them*, ECONOMIST, Aug. 13, 1994, available in LEXIS, News Library, Econ File.

²³ Schengen Agreement, *supra* note 7, art. 19.

²⁴ *Id.*

²⁵ See Anjewierden, *supra* note 6, at 238. In addition to discussing obligations placed upon the Dutch by the Schengen Agreement, Anjewierden also alludes to international pressure that was placed on the Netherlands before the Schengen Agreement was formulated. *Id.* It focuses primarily upon Swedish and West German criticism regarding the Dutch policy of permitting soft drug distributors to operate in youth houses under certain guidelines. *Id.*

²⁶ See *Control of Individuals: 4.1 Current Position & Outlook*, INFO-92, Aug. 3, 1994, available in LEXIS, Europe Library, Info-92 File [hereinafter *Control of Individuals*].

²⁷ *Nine EC States Agree to Open Borders From December*, Xinhua Gen. Overseas News Service, June 30, 1993, available in LEXIS, World Library, Xinhua File.

blocked by France, which is particularly concerned about regional effects of Dutch soft drug policy.²⁸ In response, the Dutch government is considering ways to strengthen its stance on soft drugs.²⁹

II. THE DUTCH POLICY TOWARD HARD AND SOFT DRUGS

The first drug legislation enacted in the Netherlands was the Opium Act of 1919, which was amended in 1928 in an effort to promote compliance with the International Opium Treaty joined by the Netherlands in 1925.³⁰ The 1928 version of the Opium Act added cocaine to the list of prohibited drugs and penalized the import, export, and transit of hemp products (i.e. marijuana and hashish), which had not previously been subject to prohibition.³¹ The Opium Act was again toughened in 1953, when the maximum sentence for drug crimes was raised from one to four years imprisonment.³² At this time, the Netherlands made the possession and consumption of hemp products criminal offenses.³³ The Opium Act was amended once again in 1976, with the demotion of possession of up to thirty grams of marijuana or hashish from an offense to a misdemeanor.³⁴

A. Dutch Drug Policy Today

The Netherlands never codified its drug policy rules and regulations into a single body of legislation.³⁵ Instead, drug law is comprised of the current version of the Opium Act in addition to international treaties like the Schengen Agreement.³⁶ The Schengen Agreement does not

²⁸ *Minister Warns France Not to Blame NL for Own Drug Problems*, ANP English News Bulletin, Sept. 27, 1995, available in LEXIS, Nexis Library, Curnws File.

²⁹ Abi Daruvalla, *Liberal Dutch Finally Get Tough on Drugs*, THE INDEPENDENT, Sept. 25, 1995, available in LEXIS, Nexis Library, Curnws File. The government has abandoned a proposal to legalize cannabis outright, and has proposed a reduction of the amount of cannabis tolerated for personal use from 30 grams to five grams. *Id.* The government has also proposed shutting down half of the coffeeshops in Amsterdam and Rotterdam where soft drugs are openly available. *Id.*

³⁰ Anjewierden, *supra* note 6, at 235. Anjewierden demonstrates that the Netherlands does indeed have historical precedent for altering its drug policy to conform with international expectations. *Id.*

³¹ *Id.*

³² *Id.* at n.3. The 1953 reforms came after the Netherlands ratified a Protocol in 1946 to toughen the International Opium Treaty, thus offering an example of Dutch willingness to adapt its drug policy to mesh with those of other countries. *See id.*

³³ Anjewierden, *supra* note 6, at 235–36.

³⁴ *Id.* at 236; van Vliet, *supra* note 9, at 731.

³⁵ *Id.* at 237.

³⁶ *Id.* at 237–38; *see also* Schengen Agreement, *supra* note 7, art. 19.

explicitly call for the adoption of more stringent drug policies in the Netherlands, rather it calls for harmonization between Member States.³⁷

The Opium Act in its current form reflects the amendments of 1976.³⁸ Prior to the amendments, rather than fighting drug abuse, Dutch law focused on prohibition and penal measures, paying little attention to social, economic, and psychological problems accompanying the use of hard drugs.³⁹ Gradually doubts arose as to the efficacy of such a repressive and indiscriminate policy.⁴⁰ Upon the subsequent recommendations of a multi-disciplinary committee investigating the existing policy, the Dutch legislature reworked the Opium Act to focus upon fighting the risks of drug abuse for individuals and society (rather than fighting consumption itself).⁴¹ Since the 1976 reform, Dutch drug policy has been based on three “pillars”:

1. Strict observation of the Opium Act as far as the manufacture of or traffic in illicit drugs is concerned (notably hard drugs) and a strict observation of the Dutch Penal Code as far as drug related crimes are concerned;
2. Not taking any action against possession of small quantities of soft or hard drugs for personal consumption, and tolerating the consumption of and traffic in soft drugs in certain youth centers;
3. Offering a wide scale of support programs to addicts with the main object to prevent and relieve the risks of drug use for the addict, his immediate environment and society as a whole.⁴²

The policies expressed in the first pillar (hard drug policy) are just as stringent as those in other EU Member States.⁴³ In fact, with the

³⁷ See Schengen Agreement, *supra* note 7, art. 19.

³⁸ See van Kalmthout, *supra* note 1, at 263–64.

³⁹ *Id.* at 261. While ignoring the social, economic, and psychological problems associated with hard drugs, Dutch law did not yet differentiate between hard and soft drugs. *Id.*

⁴⁰ *Id.* at 261–62.

⁴¹ *Id.* at 261–63; van Vliet, *supra* note 9, at 724–25. van Vliet discusses the Dutch Government's strategy of separating the soft drug market from the hard drug market in order to remove the sale and consumption of marijuana and hashish from the hard drug scene. *Id.* This would conceivably prevent experimenting youth from getting caught up with the dangerous criminal element present in the hard drug culture. *Id.*

⁴² van Kalmthout, *supra* note 1, at 262.

⁴³ *Id.* at 266.

1976 reforms, hard drug sentencing in the Netherlands increased to bring penalties into line with Western European standards.⁴⁴ For example, sentencing for heroin and cocaine trade increased from a maximum of four years imprisonment to a maximum of twelve years and/or a fine of 100,000 guilders.⁴⁵

Interestingly, hemp products have not been decriminalized *per se* in the Netherlands.⁴⁶ Since the 1976 Opium Act reforms, possession of up to thirty grams of hemp product is considered a misdemeanor and is subject to a maximum penalty of one month's imprisonment and/or a minimal fine.⁴⁷ These penalties, however, are almost never enforced due to the "expediency principle" featured in Dutch criminal law.⁴⁸

Under the "expediency principle," the Public Prosecutions Department⁴⁹ may refrain from prosecuting certain offenses "on grounds derived from the public interest."⁵⁰ In order to prevent the Prosecutions Department from exhausting its resources on minor hemp possession offenses, the Ministry of Justice has a set of guidelines to determine which offenses warrant criminal action under the Opium Act.⁵¹ The Ministry of Justice prioritizes import, export, and trafficking of hard and soft drugs, while it relegates personal possession and consumption of drugs, particularly soft drugs, to the lowest priority level.⁵² Generally, the possession of less than thirty grams of hemp product in the Netherlands will not be investigated or prosecuted.⁵³

The Ministry of Justice guidelines also designate a certain type of soft drug dealer as being immune from prosecution.⁵⁴ This type of dealer, known as a "*kokerjuffer*" or "house dealer," is an individual who,

⁴⁴ *Id.*

⁴⁵ *Id.* (citing Opium Acts, sec. 10 par. 4 (1976) (Ned.)). 100,000 guilders is roughly equivalent to \$58,000 in U.S. currency. Telephone conversation with Business Desk of the BOSTON GLOBE (Oct. 17, 1994).

⁴⁶ van Vliet, *supra* note 9, at 731. As in most other nations, marijuana and hashish are still considered controlled substances in the Netherlands. *Id.*

⁴⁷ *Id.*

⁴⁸ van Kalmthout, *supra* note 1, at 264.

⁴⁹ The Public Prosecutions Department is essentially the Dutch equivalent of a District Attorney's Office. See van Vliet, *supra* note 9, at 731.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*; see also Anjewierden, *supra* note 6, at 243.

⁵³ van Vliet, *supra* note 9, at 731. A current government proposal calls for a reduction in the tolerable amount to five grams. Daruvalla, *supra* note 29.

⁵⁴ van Vliet, *supra* note 9, at 731.

“trusted by and working under the protection of the staff of a youth center—gets the opportunity to sell cannabis products in that youth center to the exclusion of others.”⁵⁵ The guidelines provide that this type of dealer will only be prosecuted “when he publicly projects himself as a dealer or runs his business provokingly in other ways.”⁵⁶ The *kokerjuffer* is one of two types of unprosecuted soft drug dealers that have developed as a result of the policy of separating the soft drug market from the hard drug market.⁵⁷

“Coffeeshop” proprietors have also emerged as quasi-legal dealers that sell small amounts of soft drugs to their customers.⁵⁸ Although these coffeeshops are technically forbidden from advertising their product, they are readily identifiable by provocative names like “Outer Limits,” “Stoneage,” and “Stairway to Heaven,” and by window signs bearing the distinctive cannabis leaf.⁵⁹ The coffeehouse drug trade is precisely what is causing concern for other members of the EU.⁶⁰

For example, because of open borders, a foreign youth could enter a coffeeshop in Amsterdam, ask for the “alternative menu,” pay for a “takeaway bag” of Moroccan hashish in Deutschmarks, and bring it back across an unpatrolled border into his home state, where soft drug possession is still considered a serious crime.⁶¹ Consequently, nations like Germany and France argue that with the elimination of internal border controls the Dutch policy makes it more difficult for them to enforce their own laws.⁶² Thus, the Netherlands faces an internal debate over how to help harmonize drug legislation within the EU.

III. ANALYSIS—DIFFERENT OPTIONS FOR THE NETHERLANDS

A. *Conformity*

The most obvious route toward harmonization of drug laws within the EU would be for the Netherlands to adopt the soft drug policies

⁵⁵ *Id.* at 731–32, citing MINISTRY OF JUSTICE, GUIDELINES FOR THE INVESTIGATION AND PROSECUTION POLICY REGARDING OFFENSES UNDER THE OPIUM ACT, reprinted in STAATSCOURANT, July 18, 1980, at 65.

⁵⁶ *Id.* at 732.

⁵⁷ *Id.*

⁵⁸ van Vliet, *supra* note 9, at 733–34; Boyes, *supra* note 9.

⁵⁹ van Vliet, *supra* note 9, at 735; Marlise Simons, *Maastricht Journal: Drug Floodgates Open, Inundating the Dutch*, N.Y. TIMES, Apr. 20, 1994, available in LEXIS, News Library, NYT File.

⁶⁰ See Boyes, *supra* note 9.

⁶¹ *Id.*

⁶² See *id.*

that other Member States presently observe.⁶³ This would be a simple way for the EU to establish “judicial cooperation in criminal matters” as called for by the Maastricht Treaty.⁶⁴ Such a path would also satisfy the harmonization requirement in the Schengen Agreement.⁶⁵

Some indicators show that as a result of international pressure, particularly on the part of Germany and France, the Netherlands may already be headed in this direction.⁶⁶ One example of the Netherlands’ willingness to sacrifice its liberal soft drug policies in the face of international criticism is the case of the “Hash-museum” in Amsterdam.⁶⁷ This museum, opened in 1986, displayed various types of drugs and the instruments needed to use them.⁶⁸ Although Amsterdam law enforcement authorities were unable to find anything illegal about the act of operating such a museum, the Minister of Justice, in an internationally publicized press conference, called for the closing of the museum.⁶⁹ The Justice Minister’s action seemed to be intended as a cosmetic response to international criticism; the Justice Minister took no action against the many coffeehouses situated nearby and the museum reopened as soon as the uproar died down.⁷⁰

Another example of the Netherlands’ willingness to alter aspects of its drug policy in the face of international criticism is a 1985 amendment to the Opium Act criminalizing “preparatory acts” with regard to drug offenses.⁷¹ Preparatory acts are defined as procuring drugs, as well as provoking, helping, or providing an individual with the opportunity to commit a drug offense.⁷² Preparatory acts also include having

⁶³ See van Vliet, *supra* note 9, at 746. van Vliet notes that, on a special commission created in 1985 by the European Parliament to study the drug problem, a majority of the members supported a “drug-free Europe” while the minority sought the “normalization of drug problems and the reduction of drug use” (most likely using Dutch methods of separating the soft drug market from the more troublesome hard drug market). *Id.*

⁶⁴ See MAASTRICHT TREATY, *supra* note 2, art. K.1(7).

⁶⁵ See Schengen Agreement, *supra* note 7, art. 19.

⁶⁶ Anjewierden, *supra* note 6, at 238; van Vliet, *supra* note 9, at 743–44. According to van Vliet, the German government, through “economic power-play” and “salami-tactics,” and backed by an anti-Dutch public opinion, has stimulated a tightening in Dutch policy toward soft drugs since 1985. van Vliet, *supra* note 9, at 743–44. Anjewierden also speaks of “a growing tendency to submit to foreign pressure.” Anjewierden, *supra* note 6, at 238.

⁶⁷ van Vliet, *supra* note 9, at 735–36; Anjewierden, *supra* note 6, at 240.

⁶⁸ Anjewierden, *supra* note 6, at 240.

⁶⁹ van Vliet, *supra* note 9, at 735–36.

⁷⁰ Anjewierden, *supra* note 6, at 240.

⁷¹ *Id.* at 242 (citing Opium Acts, sec. 10a).

⁷² *Id.*

available means of transport, objects, substances, or funds which the suspect should have known would be used to commit a drug offense.⁷³

This amendment has been heavily criticized in the Netherlands.⁷⁴ Its detractors claim that it is not really in keeping with Dutch criminal justice. Consequently, they argue that it must be meant as a conciliatory gesture to countries critical of Dutch drug policy.⁷⁵

Finally, the Dutch government is currently considering proposals to reduce the amount of marijuana and hashish tolerated for personal use from thirty grams to five grams. In conjunction with that proposal, the government is contemplating cutting in half the number of coffee shops currently operating in the Netherlands.⁷⁶ At the same time, the government has abandoned a proposal to decriminalize cannabis products.⁷⁷

Despite these signs of a toughening stance toward soft drugs, official Dutch policy remains essentially the same. Whether or not the Netherlands will completely transform its soft drug policy in order to help achieve harmonization among Schengen nations and in the EU remains unclear. While the Dutch government has shown a willingness to bend in the face of international criticism,⁷⁸ Dr. Theo van Iwaarden, head of the Alcohol, Drugs and Tobacco Policy Department in the Health Ministry claims that the Netherlands "will never accept a harmonization of drugs policy throughout the EU if it involves a step backwards from our current situation."⁷⁹

B. *Promotion of Dutch Policy Throughout the EU*

As opposed to adapting its soft drug policies to agree with the more repressive policies of other Member States, the Netherlands could instead attempt to convince these other States that Dutch policies are serious, successful, and worth examining for use elsewhere.⁸⁰ The evidence shows that the Dutch policy toward soft drugs has indeed worked.⁸¹ Various studies demonstrate that, since the liberalization and de facto legalization of soft drug consumption in 1976, the use of soft drugs

⁷³ *Id.*

⁷⁴ *Id.* at 242-43.

⁷⁵ Anjewierden, *supra* note 6, at 242-43.

⁷⁶ Daruvalla, *supra* note 29.

⁷⁷ *Id.*

⁷⁸ See Anjewierden, *supra* note 6, at 240, 242.

⁷⁹ *Id.*

⁸⁰ See van Vliet, *supra* note 9, at 743-44.

⁸¹ van Kalmthout, *supra* note 1, at 265.

has decreased substantially.⁸² The numbers of young people, in particular, have fallen with respect to soft drug use.⁸³ Furthermore, with the separation of the hard and soft drug markets and the consequent “normalization” of soft drug use, marijuana and hashish users rarely turn to more dangerous drugs.⁸⁴ The problem of Dutch youth becoming involved in heavy drug use or the drug-crime connection is thus very limited.⁸⁵ Health, crime, and public order problems associated with drug use apply mainly to the “old” addict group, defined as individuals addicted to hard drugs prior to the 1976 reforms, as well as heroin-dependent prostitutes and foreign addicts.⁸⁶

Nonetheless, indicators also exist suggesting that the Dutch policy toward soft drugs is not as successful as its proponents might assert, particularly from an international perspective. For example, the permissive rules on soft drugs draw many foreign “drug tourists” to the Netherlands who bring their hard drug problems with them.⁸⁷ Police in border towns such as Maastricht, Heerlen and Arnhem complain that eighty percent of their time is taken up by drug-related crimes that serve largely to pay for foreigners’ drug needs.⁸⁸

While the burden placed on Dutch society by foreign addicts is seen by some as a reason for the Netherlands to tighten its policy toward soft drugs, others believe that this supports a strong argument for other nations to liberalize their own drug laws.⁸⁹ In a report to the European Commission in February, 1994, Commission member Marco Taradash of Italy questioned the efficacy of repression and requested that consumption and possession for personal consumption of small amounts of illegal drugs be decriminalized throughout the EU.⁹⁰ Other mem-

⁸² *Id.* The author cites two studies in making this assertion: *Cannabis Consumption in the Netherlands* (a 1984 Ministry of Justice study) and *Twenty Years of Soft Drug Use in the Netherlands (a retrospective from prevalence studies)*, an independent study conducted by D.J. Korf in 1988. *Id.* at n.11.

⁸³ *Id.* In 1976, three percent of youths between the ages of 15 and 16 and 10% of those between 16 and 17 occasionally used soft drugs; by 1983, these figures were two percent and six percent respectively. *Id.*

⁸⁴ van Vliet, *supra* note 9, at 728.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Simons, *supra* note 59.

⁸⁸ *Id.* These “drug-related” crimes include car thefts, assaults, and burglaries. *Id.*

⁸⁹ See Edward Stourton, *Breaking the Legal Habit: Is Legalisation the Only Choice Left in the War on Drugs?*, GUARDIAN, Oct. 5, 1993, available in LEXIS, Europe Library, Guardn File.

⁹⁰ EU: Taradash Report Recommends Decriminalizing Personal Use of Soft Drugs, Reuters, Feb. 15, 1994, at 1, available in LEXIS, World Library, Txtlne File.

bers of the Commission concurred, citing the failure of the international "war on drugs" in support of their request.⁹¹ Commission members from the Netherlands felt strongly that the current policies throughout the EU put the Netherlands in an unfair position of having to support drug addicts from other states.⁹²

Nonetheless, the official position of the Commissioner, while acknowledging international disagreement on this point, holds that decriminalization of consumption throughout the EU does not offer a viable solution to the European drug problem.⁹³ Criminal matters still remain in the jurisdiction of the Member States.⁹⁴ How this position will effect the Netherlands remains uncertain.

V. CONCLUSION

The Netherlands faces a dilemma. It has an obligation under both the Maastricht Treaty and the Schengen Agreement to participate in a pan-European harmonization of drug legislation. Although the Netherlands has no obligation to change its own laws, this may be the easiest solution. On one hand, the Dutch would have a much easier time unilaterally tightening their own soft drug policies than they would convincing the other EU and Schengen states to adapt theirs to conform with the Netherlands.

Alternatively, the Netherlands' best interests lie in maintaining its liberal policies toward soft drug possession and consumption. The internal policies have arguably been successful. The main difficulties with the policies are attributable to drug addicts from neighboring states. Given its own domestic success, the optimal solution would be for the Netherlands to convince other States of the viability of its policies. This way the Dutch would neither jeopardize their own efforts at combatting drug problems and the other nations would embark on a more successful policy than those they have been using to this point.

Unfortunately, while enlightenment of its neighbors would be the ideal policy for all concerned, the Netherlands is most likely to adopt

⁹¹ *Id.*

⁹² *Id.* Commission member Nel van Dijk of the Netherlands criticized those who accuse her country of "every evil as if the devil had a Dutch passport with the number 666," adding that the Netherlands cannot continue to "subsidize" drug addicts from other states, particularly Germany and Belgium. *Id.*

⁹³ *Id.* at 3.

⁹⁴ *Id.*

the policies of the other States. The Dutch have already shown a willingness to compromise aspects of their policy in the face of international pressure. Such pressure will no doubt increase as internal border controls continue to fall. Along with internal border controls, the de facto decriminalization of soft drugs in the Netherlands will waft away as well.

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